Supreme Court, U.S.
FILED
99 27 JUN 29 1999

No. _____

In The

Supreme Court of the United States

GLADYS SHELTON,

Petitioner,

versus

HAROLD L. ROSBOTTOM, JR.,
LESLIE FOX ROSBOTTOM and
MARTIN A. SCHOTT, Chapter 11 Trustee,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Can the "equitable mootness doctrine," a judicially created rationale for protecting confirmed bankruptcy reorganization plans from dismantling by appellate courts once implemented, be invoked to shield from substantive appellate review a Chapter 11 plan confirmed in violation of the Bankruptcy Code, if the appellate court can fashion an effective remedy and the relief requested does not adversely affect the rights of third parties not before the reviewing court?

2. Can the "equitable mootness doctrine" be properly applied to foreclose appellate review of a confirmed liquidation, rather than reorganization, plan under circumstances where all parties to be affected by the relief sought on appeal are before the reviewing court and no nonadverse third party has acquired any of the debtor's liquidated assets in reliance on the confirmed plan?

3. Is there any support in the Bankruptcy Code or otherwise for application of the "equitable mootness doctrine" to preemptively dismiss an appeal prior to consideration of the merits or is the doctrine more appropriately applied, in order to protect reorganization and legitimate third party reliance interests, as a possible limitation on available remedies after consideration of the merits of an appeal?

PARTIES TO THE PROCEEDINGS

The following were parties to the proceedings in the United States Court of Appeals for the Fifth Circuit:

1. Gladys Shelton (appellant)
2. Harold L. Rosbottom (appellee)
3. Leslie Fox Rosbottom (appellee)
4. Martin A. Schott, Chapter 11 Trustee (appellee)

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDINGS ii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

A. Preliminary Statement 2

B. Statement of Facts 4

C. Procedural History 6

REASONS FOR GRANTING THE WRIT 10

I. The Fifth Circuit's Decision Conflicts with Decisions of Other Circuits Recognizing That the Equitable Mootness Doctrine Should Not Be Applied If the Appellate Court Can Fashion an Effective Remedy 11

II. The Fifth Circuit's Decision Presents an Important Question that Should Be Decided by This Court Regarding the Availability of Appellate Review of Bankruptcy Plan Confirmation Orders 14

CONCLUSION 15

APPENDICES

APPENDIX A:

Decision of the United States Court of Appeals for the Fifth Circuit ..... App. 1

TABLE OF CONTENTS – Continued

Page

APPENDIX B:

Ruling of the United States District Court for the Middle District of Louisiana on Petitioner's Motion for Reconsideration .....App. 5

APPENDIX C:

Judgment of the United States District Court for the Middle District of Louisiana .....App. 7

APPENDIX D:

Ruling of the United States District Court for the Middle District of Louisiana on Respondent's Motion to Dismiss Appeals .....App. 8

APPENDIX E:

Order of the United States District Court for the Middle District of Louisiana on Petitioner's Motion for Continuance of Hearing On Motion to Dismiss Appeals.....App. 10

APPENDIX F:

Order of the United States Bankruptcy Judge, Middle District of Louisiana, Denying Petitioner's Motion for Reconsideration of Confirmation Order .....App. 11

APPENDIX G:

Order of the United States Bankruptcy Judge, Middle District of Louisiana, Confirming Plan.....App. 12

APPENDIX H:

Decision of the United States Court of Appeals for the Fifth Circuit Denying Petition for Rehearing .....App. 15

TABLE OF CONTENTS – Continued

Page

APPENDIX I:

Motion for Continuance of Hearing on Appellee's Motion to Dismiss Appeals.....App. 17

APPENDIX J:

Motion for Reconsideration of Order Dismissing Appeals and for Additional Extension of Time to Seek Abandonment of Appeals Under Bankruptcy Code Section 554(b).....App. 20

TABLE OF AUTHORITIES

Page

CASES

In re AOV Industries, Inc., 792 F.2d 1140 (D.C. Cir. 1986) 11

In re: Arnold & Baker Farms, 85 F.3d 1415 (9th Cir. 1996) 11, 13

In re: Block Shim Development Company (Ronit v. Stemson), 939 F.2d 289 (5th Cir. 1991) 11

In re: Chateaugay Corporation, 10 F.3d 944 (2nd Cir. 1993) 11

In re: Continental Airlines, 91 F.3d 553 (3rd Cir. 1996) 11

In re: Information Dialogues, Inc., 662 F.2d 475 (8th Cir. 1981) 11

In re: King Resources Company, 651 F.2d 1326 (10th Cir. 1980) 11

In re: UNR Industries, 20 F.3d 766 (7th Cir. 1994) 11

Manges v. Seattle-First National Bank, 29 F.3d 1034 (5th Cir. 1994) 10, 11, 12

Miami Center Limited Partnership v. Bank of New York, 838 F.2d 1547 (11th Cir. 1988) 11

Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157 (1988) 13

Rochman v. Northeast Utilities Service Group (In re Public Service Co. of N.H.), 963 F.2d 469 (1st Cir. 1992) 11

TABLE OF AUTHORITIES – Continued

Page

U.S. CODE

11 U.S.C. § 1129 14

28 U.S.C. § 1254 1

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is not reported. It is included in the Appendices as Appendix A. The Fifth Circuit's denial of petitioner's application for rehearing is included in the Appendices as Appendix H. The decisions of the United States District Court for the Middle District of Louisiana are not reported. They are included in the Appendices as Appendices B, C and D.

JURISDICTION

The judgment of the Fifth Circuit affirming the decisions of the District Court was entered on March 3, 1999. On March 17, 1999, petitioner filed a timely application for panel rehearing. The Fifth Circuit denied petitioner's application for rehearing on March 31, 1999. This Petition for a Writ of Certiorari is being filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

The whole United States Bankruptcy Code is the only federal statute involved.

STATEMENT OF THE CASE

A. Preliminary Statement

This petition presents the issue, not heretofore addressed by this Court, of the proper application, if any, of the judicially created "equitable mootness doctrine" to support dismissal of the appeal of a confirmed Chapter 11 bankruptcy plan without consideration of the merits of the appeal. The equitable mootness doctrine was created by appeals courts to address the problems caused by appeals of confirmed bankruptcy reorganization plans where, as a result of plan confirmation, new stock has been issued and/or assets transferred to innocent third parties and/or creditors have made concessions or extended additional credit or funds and it becomes unfair and extremely difficult to "unscramble the reorganized egg," so to speak, without damaging innocent third parties or destroying the ability of a debtor to successfully reorganize. Under such circumstances, the federal appeals courts have held that, in the absence of a stay pending appeal and in the face of substantial consummation of a confirmed plan, mootness precludes judicial review of the confirmation order and requires dismissal of the appeal. The doctrine has been invoked by federal district courts, sitting as appellate courts of bankruptcy appeals, and by the appeals courts in most circuits as a threshold consideration prior to entertaining the merits of appeals from bankruptcy court orders confirming Chapter 11 reorganization plans. Plan proponents, seeking to avoid or evade appellate review of plan treatment of dissenting creditors or other parties in interest, often build into their plans, if possible, immediate or at least hasty consummation or implementation of plans in order

to assure dismissal of any appeals without substantive review of the merits. Aggrieved creditors and other parties, unless they can obtain an immediate stay pending appeal prior to plan implementation, are often unable to obtain appellate review no matter how meritorious their position on appeal or how unfairly they have been treated by the plan.

In this case, the Fifth Circuit affirmed a district court decision dismissing as moot petitioner Gladys Shelton's appeal of a creditor-proposed plan of liquidation of a company owned by Shelton. The plan, demonstrably violative of the confirmation requirements of the Bankruptcy Code, called for the immediate transfer to the plan proponent, prior to the 10-day deadline for appealing the confirmation order, of all of the debtor's assets in payment of the proponent's claim and his assumption of the debtor's obligations to other creditors. The plan also called for the release of all claims of the debtor against the plan proponent. Although before and during confirmation and on appeal from the confirmation order Shelton raised several substantial issues regarding the actual value of the plan proponent's claim, the value of the debtor's assets being transferred to the plan proponent and the propriety of releasing and compromising a significant offsetting claim of the debtor against the plan proponent, neither the district court nor the appeals court considered the merits of the issues raised by Shelton on appeal. It is quite possible, and if given an opportunity, Shelton believes she can establish that it is probable, that the plan proponent received assets under the plan of a value far in excess of the value of the plan proponent's legitimate claim and the claims of other creditors paid by

the proponent under the plan. The relief sought by Shelton on appeal, proper valuation of the plan proponent's claim, proper valuation of the debtor's assets and proper evaluation of the debtor's offsetting claim against the plan proponent are remedies readily available to the appeals court.

The Fifth Circuit's decision conflicts with decisions in other circuits which have declined to apply the equitable mootness doctrine when the appeals court can direct or fashion a remedy. This Court has never directly addressed the propriety of the judicially created equitable mootness doctrine. This case presents an opportunity for the Court to review this frequently litigated issue – there are several bankruptcy mootness cases each year in each of the appellate courts – and to properly define its role in appeals of bankruptcy plan confirmation orders.

B. Statement of Facts

Gladys Shelton, is the owner of Shelton Truck Stop, Inc. The Shelton family built and operated a truck stop in St. Francisville, Louisiana, the only major truck stop facility between the major metropolitan areas of Baton Rouge, Louisiana and Natchez, Mississippi. In 1993, Shelton and her son got involved with a video poker operator named Harold Rosbottom and agreed to let his company, Nitro Gaming, Inc., construct and operate a video poker facility at the Shelton's St. Francisville truckstop. Shelton Truck Stop, Inc. ("STSI") received 50% of net video poker revenues from the operation of the facility. In 1994, Rosbottom talked Shelton and her son into buying from him a company that owned a truck stop and video poker facility in

DeRidder, Louisiana. Rosbottom had earlier that year acquired the DeRidder truck stop for $200,000 and spent another $75,000 or so constructing a video poker facility on the premises. Only four months later, he sold it to the Sheltons, actually STSI, for approximately $950,000. STSI paid about $90,000 in cash and Shelton signed a note on behalf of STSI for the remaining $860,000. Rosbottom's Nitro Gaming also conducted video poker operations at the DeRidder truck stop, from which STSI received 25% of net revenues.

In January of 1995, Rosbottom talked Mrs. Shelton into mortgaging the St. Francisville truck stop (in addition to the DeRidder truck stop) as well as giving him a security interest in all of STSI's video poker revenues from both truck stops as additional security for the DeRidder note. In March, 1995 he started withholding all video poker revenues due from Nitro Gaming and strangled the Sheltons' cash flow. In May he took over operation of the DeRidder truck stop under a clause in the security agreements and in September, 1995, he had himself appointed "keeper" or custodian, under all the mortgages, of all of STSI's properties, business operations and income. Lawsuits were filed by both sides and in January, 1996, Shelton put STSI in Chapter 11 to extricate it from Rosbottom's clutches. She also filed a personal Chapter 11 proceeding as she was a personal guarantor on a lot of STSI's debt.

On January 3, 1996, right before Mrs. Shelton put STSI in Chapter 11, Rosbottom, as STSI's keeper, forfeited to the Louisiana State Police STSI's 50-machine video poker license for the St. Francisville truckstop because he had failed, as keeper for the previous four months in the

fall of 1995, to get the St. Francisville truck stop's parking lot properly paved by a December 31, 1995 deadline imposed by the video poker law. This reduced video poker revenues from that location by $30,000 a month and significantly devalued the truckstop and its video poker facility.

C. Procedural History

Despite Rosbottom's flagrantly overreaching actions, the bankruptcy court permitted Rosbottom to continue operating STSI's business and to retain its revenues during the course of the bankruptcy. Even after the appointment of a Chapter 11 trustee in May, 1996,[1] the bankruptcy court permitted Rosbottom to retain control of all of the debtor's business operations and revenues, without ever having to render an accounting. In the summer of 1996, Rosbottom proposed a plan of liquidation of STSI, which basically called for the transfer to him all of STSI's assets, including the two truck stops, all video poker revenues, and some prime real estate owned by STSI in St. Francisville, in payment of the DeRidder note

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[1] The bankruptcy court, on its own motion, appointed a Chapter 11 trustee after the trial of an adversary proceeding by the debtor against Rosbottom, concluding that an adverse decision would preclude, on res judicata grounds, pursuit of other claims of the debtor against Rosbottom and that the debtor's counsel, having not consolidated other pending adversaries, could not now effectively represent the debtor without a conflict of interest. The court permitted the newly appointed Chapter 11 trustee, Martin Schott, to amend the adversary pleadings to preserve and keep alive the debtor's claim.

(which had grown from $860,000 to approximately $1.1 million during Rosbottom's tenure as STSI's keeper for the four months preceding the bankruptcy) and assumption by Rosbottom of all the other STSI debt. The plan also called for the release of all claims against Rosbottom, including a claim for damages resulting from his failure to pave the St. Francisville parking lot and loss of the truck stop video poker license and approximately $360,000 annually in video poker profits.

Shelton opposed confirmation of the Rosbottom plan, requested valuation of STSI's assets and its claims against Rosbottom and objected to Rosbottom's inflated claim against STSI on the DeRidder note (the Sheltons and STSI had already paid almost $500,000 in principal and interest on the note prior to bankruptcy). She also requested that the bankruptcy court postpone the confirmation hearing for three weeks, until after a scheduled November 5, 1996 local option election in which the citizens of each parish (county) in the state would be given the option to vote for or against the continuance of various forms of gaming. This would have permitted a more accurate valuation of the truck stops and STSI's video poker contracts with Nitro Gaming. At that time, no other bankruptcy proceeding in Louisiana involving gaming properties, including the major Harrah's casino bankruptcy in New Orleans,[2] went forward with valuation or confirmation of a plan until after the November 5th local option election. However, in this case, the bankruptcy court declined to postpone confirmation on the grounds that Rosbottom

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[2] *In re: Harrah's Jazz Company*, No. 95-4545, United States Bankruptcy Court, Eastern District of Louisiana.

might pull his plan if there was a negative local option vote and the St. Francisville truck stop had not reacquired a full 50 machine license by the time of the November 5th election.[3]

On October 10, 1996, the bankruptcy court confirmed the Rosbottom plan, finding no equity for Shelton in the debtor's assets and thereby justifying the transfer of all of STSI's assets to Rosbottom, but not until after the bankruptcy judge invited an amendment to the plan's definitions that would in effect thwart appellate review of the confirmation order. During the course of the confirmation hearing, the judge instructed Rosbottom's counsel on how to amend the definition of the "effective date" of the plan to provide for immediate consummation of the plan and transfer of all assets to Rosbottom, even before the 10 day appeal deadline, thereby rendering moot any appeal and avoiding substantive appellate review of the plan. At a subsequent hearing on Shelton's motion to reconsider the confirmation order, the bankruptcy judge pre-emptively stated that he would not stay the confirmation order pending appeal, if Shelton chose to appeal, and therefore the appeals court would automatically dismiss the appeal as moot because of substantial consummation of the plan.

Notably, and not coincidentally, the day after the confirmation hearing, Louisiana's Gaming Control Board

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[3] Under the local option election law, with a 50-machine license, there would be at least 3 years of video poker operations and revenues prior to sunset, even with a negative local option vote. However no new 50-machine license could be acquired by a truck stop in a parish after a negative local option vote.

restored the St. Francisville 50-machine video poker license, thereby immediately enhancing the value of the property and removing the alleged risk of no license in St. Francisville at the time of the upcoming November 5th local option election. Rosbottom had known prior to the previous day's confirmation hearing, which the judge refused to postpone because of the alleged risk of no license, of the anticipated action of the Gaming Control Board. He, of course, did not mention it at the confirmation hearing. On November 5th, the voters in West Feliciana Parish, where St. Francisville is located, approved video poker and the voters in all the surrounding parishes rejected it, thereby further enhancing the value of Rosbottom's now newly acquired St. Francisville truck stop.

Shelton appealed the confirmation order but did not seek a stay of the order pending appeal because all documents necessary to transfer all of STSI's assets to Rosbottom and release all claims against him were immediately executed before the appeal period had run and there was no opportunity prior to consummation to seek a stay in the district court. And sure enough, as the bankruptcy judge had predicted, and indeed planned, both the district court and the Fifth Circuit have dismissed Shelton's appeal as moot.

Rosbottom, with the help of the bankruptcy court, banked on the unique bankruptcy equitable mootness doctrine to deliberately thwart substantive judicial review of the confirmation of a liquidation plan demonstrably illegal under the Bankruptcy Code.

In affirming dismissal of Shelton's appeal on mootness grounds the Fifth Circuit noted that the plan had been substantially consummated and then recited, without any examination or analysis, that it "could not fashion effective and equitable relief." The Court supported its conclusion by citing an earlier Fifth Circuit decision, *Manges v. Seattle-First National Bank*, 29 F.3d 1034, 1039 (5th Cir. 1994), a plan confirmation appeal dismissed on mootness grounds because the debtor's sole revenue producing asset had been transferred to an unrelated third party and certain creditors had either contributed significant funds to pay expenses of reorganization or made significant concessions to make the plan work.

REASONS FOR GRANTING WRIT

This Court has never addressed the question of whether the equitable mootness doctrine, created by the appellate courts, is a legitimate basis for dismissal of appeals of bankruptcy plan confirmation orders without review on the merits. If the Court finds that some limitation on appellate remedies is necessary to protect confirmed bankruptcy reorganization plans from dismantling by appellate courts once implemented and to protect the rights of third parties not before the reviewing court who have taken actions or acquired property or made concessions in reliance on confirmed plans, is the doctrine more appropriately applied as a possible limitation on available remedies after consideration of the merits rather than a disposition that precludes consideration of the merits? If this Court finds that the equitable mootness doctrine should be invoked as a threshhold matter prior

to consideration of the merits of a plan confirmation appeal, then this case provides an oppportunity for this Court to limit the application of this judicially created doctrine so that it cannot be easily and deliberately abused to thwart judicial review of bankruptcy plans confirmed in violation of the Bankruptcy Code.

I. The Fifth Circuit's Decision Conflicts with Decisions of Other Circuits Recognizing That the Equitable Mootness Doctrine Should Not Be Applied If the Appellate Court Can Fashion an Effective Remedy.

Most circuit courts of appeal have recognized the equitable mootness doctrine as grounds for dismissing appeals of bankruptcy plan confirmation orders under certain circumstances without consideration of the merits of an appeal. *Rochman v. Northeast Utilities Service Group (In re Public Service Co. of N.H.)*, 963 F.2d 469 (1st Cir. 1992); *In re: Chateaugay Corporation*, 10 F.3d 944 (2nd Cir. 1993); *In re: Continental Airlines*, 91 F.3d 553 (3rd Cir. 1996); *In re: Block Shim Development Company (Ronit v. Stemson)*, 939 F.2d 289 (5th Cir. 1991); *Manges v. Seattle-First National Bank*, 29 F.3d 1034, 1039 (5th Cir. 1994); *In re: UNR Industries*, 20 F.3d 766 (7th Cir. 1994); *In re: Information Dialogues, Inc.*, 662 F.2d 475 (8th Cir. 1981); *In re: Arnold & Baker Farms*, 85 F.3d 1415 (9th Cir. 1996); *In re: King Resources Company*, 651 F.2d 1326 (10th Cir. 1980); *Miami Center Limited Partnership v. Bank of New York*, 838 F.2d 1547 (11th Cir. 1988); *In re AOV Industries, Inc.*, 792 F.2d 1140 (D.C. Cir. 1986).

With the exception of only one case, *Manges v. Seattle-First National Bank*, appellate courts have applied the

doctrine to **reorganization** plans and not **liquidation** plans such as the plan in this case. The reasons are apparent. There are no eggs to unscramble in a liquidation, only the disposal of assets. There are no complex arrangements and compromises, no reorganized ongoing business, no new stockholders, no creditors extending additional credit or funds. In fact one of the factors taken into account in determining whether or not to apply the equitable mootness doctrine to a bankruptcy plan confirmation appeal is consideration of what effect the appeal will have on reorganization and the debtor's ability to successfully reorganize.

Notably, all the appellate courts have held that the failure to obtain a stay pending appeal and substantial consummation of a plan are insufficient grounds, standing alone, to warrant application of the equitable mootness doctrine. Other factors, such as an adverse effect on reorganization or adverse financial consequences to innocent third parties who may have purchased stock or assets or extended credit in reliance on the confirmed plan or the inability of the appeals court to fashion a remedy fair to all parties, must weigh against reversal of the plan confirmation in order to warrant application of the mootness doctrine and dismissal of the appeal. In fact, in *Manges*, the only liquidation case, other than this case, dismissed on mootness grounds, the Fifth Circuit did so on the basis that the debtor's sole income producing asset had been sold to a third party and that sale could not be unraveled without severe damage to such party.

This case is readily distinguishable from all the reorganization cases dismissed on mootness grounds, as well

as *Manges*, the one single asset liquidation case involving an irreversable transfer to an innocent third party not involved in the appeal. In this case the appeals court could have readily fashioned a remedy by requiring the proper valuation of the assets transferred to Rosbottom, as well as Rosbottom's legitimate uninflated claim against STSI. The court could have required that STSI's offsetting claim against Rosbottom for temporary loss of the St. Francisville video poker license be properly evaluated prior to compromise and release. See *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S.Ct. 1157 (1988). The court could have required a determination of whether Rosbottom got more under the plan than he was entitled to receive for his legitimate claim. If he did, the transfers to Rosbottom effected under the plan can be unravelled and STSI's assets and the revenues from them are more than sufficient to pay off all creditors, including Rosbottom. Furthermore, there are no innocent third parties who have acquired assets that it would be unfair to force them to return.

Several appellate courts have emphatically declined to apply the equitable mootness doctrine so long as the court can fashion some form of meaningful relief. *In re UNR Industries, Inc.*, supra.; *In re Arnold & Baker Farms*, supra. In fact, in *Arnold & Baker Farms*, the Ninth Circuit held that under circumstances where a transfer was between parties to the appeal, the court could fashion effective relief by ordering the transferee-creditor to return to the debtor the assets transferred.

II. The Fifth Circuit's Decision Presents an Important Question that Should Be Decided by This Court Regarding the Availability of Appellate Review of Bankruptcy Plan Confirmation Orders

The issues raised by this writ application appear frequently in connection with challenges to Chapter 11 plan confirmation orders. In order to be properly confirmed, Chapter 11 plans must comply with certain requirements of the Bankruptcy Code, including the requirement that a plan be fair and equitable to all interested parties and that a creditor not receive more than the value of his claim. 11 U.S.C. § 1129. Several plan confirmation requirements of Bankruptcy Code § 1129 depend on a proper valuation of a debtor's assets, liabilities and future business prospects.

Such did not occur in this case. However, because of immediate consummation of the plan and the Fifth Circuit's incorrect application of the equitable mootness doctrine, petitioner Shelton has been denied an opportunity for meaningful review of the Rosbottom plan's compliance with the requirements of the Bankruptcy Code. The present application of the equitable mootness doctrine and the equities of the situation merit consideration by this Court. Rosbottom received far more assets under the plan than the value of his legitimate claim and the claims of other creditors he assumed. In fact it is demonstrable that all the other creditors could be and, in fact, have been paid out of the video poker revenues that, absent the Rosbottom plan, would have belonged to STSI. The issue that petitioner seeks to have this Court address is whether immediate plan consummation and preemptive refusal by a bankruptcy court to grant a stay pending

appeal can be used to successfully invoke the equitable mootness doctrine and deliberately shield a patently illegal plan from substantive judicial review. The Supreme Court has never addressed the judicially created equitable mootness doctrine at all, much less its flagrant abuse as in this case.

CONCLUSION

For the reasons stated above, this Court shoud grant certiorari to review the judgment and opinion of the Fifth Circuit Court of Appeals in this case.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-31234

IN THE MATTER OF:
SHELTON'S TRUCK STOP, INC.,

Debtor.

GLADYS SHELTON,

Appellant,

v.

HAROLD L. ROSBOTTOM, JR., LESLIE FOX ROSBOTTOM, and MARTIN A. SCHOTT, Chapter 11 Trustee,

Appellees.

Appeal from the United States District Court for the Middle District of Louisiana, Baton Rouge
(97-CV-95-A)

(Filed Mar. 03, 1999)

Before KING, Chief Judge, REAVLEY and BENAVIDES, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Gladys Shelton, the sole shareholder of the debtor, Shelton Truck Stop, Inc., appeals the confirmation order entered by the bankruptcy court on October 10, 1996. That order approved a reorganization plan ("Plan") that had been proposed by the debtor's largest creditor, Harold Rosbottom, who is an appellee here. Shelton filed a motion for reconsideration, which the bankruptcy court denied on October 25. On November 4, Shelton filed a notice of appeal of the confirmation order but did not seek a stay of that order from the bankruptcy court or the district court.

In the meantime, Rosbottom and the Chapter 11 trustee, who is also an appellee here, began to implement the confirmed Plan: On the same day that Shelton appealed to the district court, the trustee transferred the debtor's assets to St. Francisville Investments, LLC ("SFI"), an entity formed and capitalized by Rosbottom. With the trustee's agreement, the bankruptcy court on November 8 dismissed with prejudice the adversary proceedings that the debtor or its trustee had instituted against Rosbottom. SFI assumed and paid interest due on Shelton Truck Stop's secured debts to the Small Business Administration and to a local bank, tendered $10,000 for a secured debt owed by the debtor to Shelton's sister, paid the administrative expenses of the trustee and his counsel, and began monthly payments to cover priority tax claims. In addition, small unsecured creditors received remuneration representing 50% of their claims, and large unsecured creditors began in April 1997 to receive regular disbursements derived from revenues generated by the property transferred to SFI. Under the

terms of the Plan, the latter class of creditors are recouping 100% of their claims.

In the district court, appellee Rosbottom moved to dismiss Shelton's appeal, arguing that substantial consummation of the Plan had rendered the appeal moot and that Shelton lacked standing. Shelton did not oppose the motion. The district court accepted the appellee's arguments and granted the motion to dismiss. Shelton then moved for reconsideration, requesting additional time to secure the Chapter 7 trustee's abandonment of the claims at issue so that Shelton could pursue them. In her motion, Shelton did not contest the court's conclusion that her appeal was moot. The district court denied the motion for reconsideration, finding that Shelton had failed to show good cause or substantial reason to set aside the dismissal. In its order, the district court noted that it had previously granted Shelton an extension and that she had allowed that time to lapse without moving for a continuance or taking other steps to preserve her claims. Shelton filed a notice of appeal from the district court's dismissal of her appeal and its denial of her motion for reconsideration.

We agree with the district court's finding that the instant appeal is moot and need not address the appellees' alternative argument in support of dismissal. Shelton did not obtain a stay, and as a consequence, implementation of the Plan proceeded unhindered. At this juncture, the Plan has been substantially consummated such that this court could not fashion effective and equitable relief. *See Manges v. Seattle-First National Bank*, 29 F.3d 1034, 1039 (5th Cir. 1994) (explaining that, in assessing whether a bankruptcy appeal is moot, the court

examines whether a stay has been obtained, whether there has been substantial consummation of the plan, and whether the relief requested would affect either the plan's success or the rights of third parties not before the court). We therefore decline to consider the merits of the confirmation order and DISMISS the appeal as moot.

The appellee has moved for damages and costs under Rule 38 of the Federal Rules of Appellate Procedure, claiming that Shelton's appeal is frivolous. Although we find that Shelton's appeal lacks merit, we decline to deem it frivolous. We therefore DENY the appellee's request for damages.

APPEAL DISMISSED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:	CIVIL ACTIONS
SHELTON TRUCK STOP, INC.	NO. 97-62-A NO. 97-95-A

RULING ON MOTION FOR RECONSIDERATION

(Filed Aug. 12, 1997)

This matter is before the court on a motion by appellant for reconsideration[1] of the dismissal of these consolidated appeals from the bankruptcy court. No opposition has been filed. There is no need for oral argument.

Appellant appealed from orders of the bankruptcy court confirming a plan of reorganization of the debtor and disallowing appellant's claim against the debtor. On May 29, 1997, the court granted a motion by the appellees to dismiss on the basis of mootness and lack of standing. On June 2, 1997, judgment was entered dismissing the appeals.

Appellant has failed to demonstrate good cause or substantial reason for setting aside the judgment. Appellant seems to concede that she lacks standing unless the Chapter 7 trustee formally abandons the appeals. She apparently wants the court to reopen the case and allow "a reasonable additional period of time" for the Trustee to

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[1] A judgment having been entered in this case, the motion is more properly brought as a motion for new trial.

abandon the appeals so she may pursue them individually. The court previously allowed an extension of time and appellant allowed that period of time to elapse without moving for a continuance or taken any other steps to preserve her appeal.

Accordingly, the motion for reconsideration, treated as a motion for new trial, is hereby DENIED.

Baton Rouge, Louisiana, August 12, 1997.

/s/ John V. Parker
JOHN V. PARKER,
CHIEF JUDGE
MIDDLE DISTRICT
OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:

SHELTON TRUCK STOP, INC.

CIVIL ACTION

NO. 97-62-A & 97-95-A

JUDGMENT

(Filed Jun. 2, 1997)

For the written reasons assigned and filed herein:

IT IS ORDERED ADJUDGED AND DECREED that the motion to dismiss the appeals is hereby GRANTED and the above actions are hereby DISMISSED.

Baton Rouge, Louisiana, June 2, 1997.

/s/ John V. Parker
JOHN V. PARKER, CHIEF
JUDGE
MIDDLE DISTRICT OF
LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:

SHELTON TRUCK STOP, INC.

CIVIL ACTIONS

NO. 97-62-A
NO. 97-95-A

RULING ON MOTION TO DISMISS APPEALS

(Filed May 30, 1997)

This matter is before the court on a motion by appellees to dismiss these consolidated appeals from orders of the bankruptcy court confirming a plan of reorganization of the debtor and disallowing appellant's claim against the debtor. No opposition has been filed.[1] There is no need for oral argument.

Appellees argue that the appeals are moot in view of the plan having been substantially consummated and an irretrievable change in circumstances of all parties to the Chapter 11 case. Appellees additionally argue that appellant lacks standing to prosecute the appeals because she filed an individual Chapter 11 proceeding which was converted to a case under Chapter 7 and a Chapter 7 trustee was appointed.

---

[1] Appellant did move for a continuance to afford the trustee appointed in her Chapter 7 case to "join/substitute as an appellant or otherwise abandon the appeals as assets of appellant's estate". The court granted the requested continuance until May 21. However, nothing further has been filed by appellant or the trustee.

The court finds that the motion to dismiss is well founded for the reasons advanced by appellees.

Accordingly, the motion to dismiss the appeals taken by Gladys B. Shelton, is hereby GRANTED and these actions will be dismissed.

Baton Rouge, Louisiana, May 29, 1997.

/s/ John V. Parker
JOHN V. PARKER, CHIEF
JUDGE
MIDDLE DISTRICT OF
LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:

SHELTON TRUCK STOP, INC.

CIVIL ACTION NO. 97-62-A

CONSOLIDATED WITH
CIVIL ACTION NO. 97-95-A

ORDER

(Filed Apr. 21, 1997)

Considering the foregoing motion for continuance of hearing on motion to dismiss appeals and the reason proffered therefor,

IT IS HEREBY ORDERED that said hearing is continued until the 21st day of May, 1997, in order to permit the Chapter 7 trustee of appellant's estate to make a determination with respect to joining or abandoning the instant appeals.

Baton Rouge, Louisiana, this 21st day of April, 1997.

/s/ John V. Parker
JOHN V. PARKER, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:
SHELTON TRUCK STOP, INC.
DEBTOR

CASE
NO. 96-10027

ORDER

(Filed Oct. 25, 1996)

For oral reasons given in open court on October 25, 1996,

IT IS ORDERED that the motion by Gladys Shelton for reconsideration and for new trial on the first amended plan of reorganization filed by Harold L. Rosbottom, Jr. be and hereby is **DENIED**.

IT IS FURTHER ORDERED that, upon oral motion of the trustee and by consent of the parties, the closing date for filing motions in aid of consummation of the plan, the date for submission of fee applications, and the date for filing a motion for entry of final decree be and hereby is extended to **November 12, 1996**.

Baton Rouge, Louisiana, October 25, 1996.

/s/ Louis M. Phillips
LOUIS M. PHILLIPS
UNITED STATES
BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE: SHELTON TRUCK STOP, INC.	CASE No. 96-10027 Chapter 11
Debtor	

ORDER CONFIRMING PLAN

(Filed Oct. 11, 1996)

The First Amended Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code filed by Harold L. Rosbottom, Jr. and Leslie Fox Rosbottom on September 2, 1996, having been transmitted to all creditors and equity security holders and certain non-material modifications to the Plan having been approved by the Court of October 10, 1996;

It having been determined by this Court after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. § 1129(a) have been satisfied, with the exception of 11 U.S.C. § 1129(a)(8); and

It having been determined by this Court after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. § 1129(b) have been satisfied;

IT IS ORDERED THAT the First Amended Plan of Reorganization filed by Harold L. Rosbottom, Jr. and Leslie Fox Rosbottom on September 2, 1996, as modified on October 10, 1996, is **CONFIRMED**. A copy of the confirmed Plan is attached hereto and made a part of this Order.

IT IS FURTHER ORDERED that any and all persons or entities, including, without limitation, the Debtor, its

shareholders, the Trustee or the holder of any claim or interest, are permanently, enjoined from commencing, conducting or continuing in any manner directly or indirectly, any suit, action or other legal proceeding against the Debtor or St. Francisville Investments, L.L.C., or its successors and assigns, arising from or relating to any pre-confirmation obligations of or claims against the Debtor, Harold L. Rosbottom, Jr., Leslie Fox Rosbottom, Nitro Gaming, Inc., Louisiana Gaming Corporation, St. Francisville Investments, L.L.C., and/or their officers, employees, attorneys and insureds; provided, however, the Internal Revenue Service shall be entitled to assess and collect trust fund taxes and penalties from any corporate officer of the Debtor responsible for non-payment of said trust fund taxes.

IT IS FURTHER ORDERED that the Debtor and the Chapter 11 Trustee of the Debtor's estate shall transfer to St. Francisville Investments, L.L.C. all of the Debtor's estate, right, title and interest in and to all assets of the estate free and clear from all liens, claims and encumbrances, except for any security interests, mortgage or lien which shall, by operation of the Plan, attach to the transferred assets;

IT IS FURTHER ORDERED that all remaining conditions to confirmation as set forth in Section 9.02 of the Plan attached hereto be and are hereby made a part of this confirmation order.

THUS DONE AND SIGNED on this 10 day of October, 1996 in Baton Rouge, Louisiana.

/s/ Louis M. Phillips
LOUIS M. PHILLIPS
UNITED STATES
BANKRUPTCY JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-31234

In The Matter Of:
SHELTON'S TRUCK STOP, INC

Debtor

GLADYS SHELTON;

Appellant

v.

HAROLD L ROSBOTTOM, JR; LESLIE FOX ROSBOTTOM; MARTIN A SCHOTT, Chapter 11 Trustee

Appellees

Appeal from the United States District Court for the Middle District of Louisiana, Baton Rouge

ON PETITION FOR REHEARING

(Filed Mar. 31, 1999)

Before KING, Chief Judge, REAVLEY and BENAVIDES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above case is DENIED

ENTERED FOR THE COURT:

/s/ Fortunato P. Benavides
United States Circuit Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:	***CIVIL ACTION***
SHELTON TRUCK STOP, INC.	***NO. 97-62-A***
	Consolidated with
	CIVIL ACTION
	NO. 97-95-A

MOTION FOR CONTINUANCE OF HEARING ON APPELLEE'S MOTION TO DISMISS APPEALS

(Filed Apr. 18, 1997)

NOW INTO COURT, through undersigned counsel, comes appellant Gladys Shelton, who respectfully moves the Court to continue the hearing, presently set for April 18, 1997, on the motion of appellees Harold L. Rosbottom, Jr. and Leslie Fox Rosbottom to dismiss the captioned appeals, and in support of this motion avers as follows:

1.

In the instant appeals, appellant, the sole shareholder of the debtor, seeks review of bankruptcy court orders (a) confirming a plan of reorganization of the debtor which essentially transfers all the debtor's assets to appellees and (b) disallowing appellant's claim against the debtor.

2.

Appellees seek dismissal of these appeals on the grounds of mootness and lack of standing of appellant to pursue the appeals because appellant's person Chapter 11 case has been converted by the bankruptcy court to a case under Chapter 7 and a Chapter 7 trustee appointed.

3.

Although appellant is not divested of standing to pursue these appeals by virtue of the appointment of the Chapter 7 trustee, said trustee is a proper party to the appeals and should be permitted to join/substitute as an appellant or otherwise abandon the appeals as assets of appellant's estate.

4.

The Chapter 7 trustee has been apprised of the appeal, the filing of appellant's original brief and the pending motion to dismiss and has requested counsel for appellant to provide additional information to enable the trustee to determine what course of action to take with respect to either joining the appeals or abandoning them to appellant.

5.

Appellant desires that the Court continue the hearing on appellees' motion to dismiss for 30 days in order to provide the Chapter 7 trustee of appellant's estate to make a determination with respect to joining or abandoning the instant appeals.

WHEREFORE, appellant prays that this Court continue the hearing on appellee's motion to dismiss the captioned appeals for a period of 30 days in order to provide the Chapter 7 trustee of appellant's estate to

make a determination with respect to joining or abandoning the instant appeals.

Respectfully submitted,

STEFFES & MACMURDO, LLP
2237 South Acadian Thruway
Suite 600
Baton Rouge, LA 70808
Telephone: (504) 927-6590

/s/ Katherine Wheeler
Katherine Wheeler, Bar #13401

CERTIFICATE

I hereby certify that a copy of the above and foregoing pleading has been served by mail, postage prepaid to Wm. Paul Lawrence, 115 Atkins Avenue, Shreveport, LA. 71104, Douglas Dodd, 546 Carondelet St., New Orleans, LA 70130, Carolyn Cole, Office of the U.S. Trustee, 400 Poydras St., suite 2110, New Orleans, LA 70130 and Chapter 7 Trustee, Samera Abide, 7940 Jefferson Highway, Suite 200, Baton Rouge, LA 70809 on this 17th day of April, 1997.

/s/ Katherine Wheeler

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

IN RE:	**CIVIL ACTIONS**
SHELTON TRUCK STOP, INC.	**NUMBERS 97-62-A and 97-95-A**

****

MOTION FOR RECONSIDERATION OF ORDER DISMISSING APPEALS AND FOR ADDITIONAL EXTENSION OF TIME TO SEEK ABANDONMENTS OF APPEALS UNDER BANKRUPTCY CODE SECTION 554(b)

(Filed Jun 12, 1997)

NOW INTO COURT, through undersigned counsel, comes appellant GLADYS SHELTON, who respectfully moves the Court to reconsider its order of June 2, 1997 dismissing the instant appeals and to grant appellant additional time under Section 554(b) of the Bankruptcy Code to seek an order from the Bankruptcy Court ordering appellant's Chapter 7 trustee to abandon the instant appeals as property of appellant's bankruptcy estate. In support of this motion, appellant avers as follows:

1.

In the instant appeals, appellant, the sole shareholder of the debtor Shelton's Truck Stop, Inc., seeks review of Bankruptcy Court orders (a) confirming the plan of reorganization of the debtor which essentially transfers all debtor's assets to appellees and (b) disallowing appellant's claims against the debtor.

2.

On December 13, 1996, after appellant's institution of these appeals, the Bankruptcy Court on its own motion and over the objection of Shelton and the appellees converted Shelton's individual Chapter 11 proceeding into a case under Chapter 7 of the Bankruptcy Code and appointed a Chapter 7 trustee. The claims asserted in these appeals thereafter became property of Shelton's bankruptcy estate to be administered by the Chapter 7 trustee. The order of the Bankruptcy Court converting Shelton's Chapter 11 case to a case under Chapter 7 has been appealed and is presently pending in the other division of this District Court.

3.

After filing her brief on the merits in the instant appeals, Shelton received notice of the motion of appellees, Harold and Leslie Rosbottom, to dismiss the instant appeals on grounds of the alleged mootness of the appeals because of substantial consummation of the plan and Shelton's alleged lack of standing to pursue the appeals which have now become property of her bankruptcy estate.

4.

On April 18, 1997, Shelton sought a continuance of the hearing on appellee's motion to dismiss appeals in order to afford Shelton's Chapter 7 trustee an opportunity to join/substitute as an appellant or otherwise abandon the appeals as assets of appellant's estate. No such action has been taken to date by the Chapter 7 trustee.

5.

Regardless of the inaction of the Chapter 7 trustee, appellant Shelton has standing, as a party aggrieved, to pursue these appeals and said appeals are not otherwise moot as a result of substantial consummation of the confirmed plan because this Court can fashion effective relief and no third parties, not before the Court, would be adversely affected by the relief granted.

6.

Appellant Shelton requests that this Court reconsider its order dismissing the appeals and grant appellant Shelton a reasonable additional period of time to formally seek abandonment of the appeals by the Trustee under Section 554(b) of the Bankruptcy Code in order to permit appellant to proceed forward individually to pursue the appeals.

WHEREFORE, appellant prays that this Court reconsider its order dismissing the instant appeals on mootness and lack of standing grounds and grant an extension of time for a reasonable period of time to permit appellant to seek abandonment of the appeals under Section 554(b) of the Bankruptcy Code.

BY ATTORNEYS:

STEFFES & MACMURDO
201 St. Charles Street
Baton Rouge, Louisiana 70802
Telephone: (504) 344-1333

By: /s/ Katherine Wheeler
KATHERINE WHEELER
#13401

CERTIFICATE

I hereby certify that a copy of the above and foregoing has this day been served upon Mr. Douglas Dodd, 546 Carondelet Street, New Orleans, Louisiana 70130, Ms. Carolyn Cole, 400 Poydras Street, Suite 2110, New Orleans, Louisiana 70130, Ms. Samera Abide, 7940 Jefferson Highway, Suite 200, Baton Rouge, Louisiana 70809, and Mr. W. Paul Lawrence, 115 Atkins Avenue, Shreveport, Louisiana 71104, by depositing same in the United States mail properly addressed and postage prepaid.

Baton Rouge, Louisiana this 12th day of June, 1997.

/s/ Katherine Wheeler
KATHERINE WHEELER

Supreme Court, U.S.
FILED
JUL 30 1999
OFFICE OF THE CLERK

No. 99-27

In the

Supreme Court of the United States

October Term, 1998

GLADYS SHELTON,

Petitioner,

v.

HAROLD L. ROSBOTTOM, JR.,
LESLIE FOX ROSBOTTOM
and MARTIN A. SCHOTT, Chapter 11 Trustee,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

WM. PAUL LAWRENCE, II
Counsel of Record
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Austin, Texas 78701
(512) 469-3511
Attorneys for Respondents
Harold L. Rosbottom, Jr., Leslie Fox
Rosbottom

1611

TABLE OF CONTENTS

Page

Table of Authorities ii
Statement of the Case 1
A. Statement of Facts 1
B. Procedural History 3
Argument 11
Conclusion 14

TABLE OF AUTHORITIES

Page

U.S. Supreme Court Rule 15 (2) 11

I

STATEMENT OF THE CASE

A. Statement of Facts

The Petitioner's Statement of Facts contains a biased, inaccurate account of the events leading up to the Debtor's bankruptcy filing, one filled with innuendo painting Rosbottom as a predator who took advantage of Mrs. Shelton through sharp dealings. This view of the facts is not a correct one and it finds no support in the record of the proceedings below. Respondent Rosbottom will confine his statement of the facts to the version found in the Disclosure Statement for the confirmed plan of reorganization, a document approved by the Bankruptcy Court after notice to Mrs. Shelton and an opportunity for her to voice objections. The sad truth of the matter is that Mrs. Shelton, like most bankruptcy debtors, ended up in Bankruptcy Court through a combination of misfortune and mismanagement.

The corporate Debtor was engaged in the business of operating a truck stop, convenience store and video poker facility in St. Francisville, Louisiana. Mrs. Shelton owned all of the stock of the corporate Debtor and operated the business with the assistance of her son Allen Shelton. In 1993, with Rosbottom's assistance, the Sheltons took advantage of profit opportunities under Louisiana's video poker law, which permitted truck stop facilities to operate mini-casinos of up to 50 video poker machines, while competing bars and restaurants were limited to 3 machines per location. In September of 1994, after the corporate Debtor began realizing profits in excess of $30,000 per month from the video poker facility at St. Francisville, Mrs. Shelton and her son embarked upon a program of expansion, purchasing from Rosbottom an entity know as Louisiana Deridder Truck Stop,

LLC, ("La/Deridder"), which operated another truck stop/video poker facility in Deridder, Louisiana, and leasing from a third party another truck stop/video poker facility at Creole, Louisiana.

Within three months of purchasing La/Deridder from Rosbottom, the corporate Debtor began to experience unexplained cash flow problems, despite huge revenues from the St. Francisville video poker facility. By April of 1995, Mrs. Shelton's son, Allen Shelton, who was primarily responsible for running the La/Deridder and Creole facilities, disappeared and became a fugitive wanted on an arrest warrant. By late May of 1995, Mrs. Shelton had mismanaged the operation of the three truck stop facilities to such an extent that the Creole lease was lost and the La/Deridder facility was threatened with revocation of its video poker license because it was unable for financial reasons to buy fuel and continue operations as a truck stop. Also, no arrangements were made by Mrs. Shelton to re-pave the parking lot at the St. Francisville truck stop to meet specifications of the Louisiana authorities, an action required by December 31, 1995, in order to maintain the video poker license at St. Francisville. For these and other reasons, Rosbottom declared a default under his note and security agreements with the Debtor and stepped in to preserve his collateral, taking over operation of La/Deridder in accordance with agreements between the parties and eventually, in September, 1995, obtaining a writ of sequestration of the St. Francisville facility and appointment as keeper of that facility in foreclosure proceedings filed in a Louisiana state court.

As keeper of the St. Francisville truck stop, Rosbottom signed a contract with an independent third- party contractor and posted funds in escrow well in advance of the

December 31, 1995, deadline in order to meet the Debtor's licensing responsibility to have the St. Francisville parking lot paved in accordance with Louisiana's new regulations. Through no fault of Rosbottom, the contractor commenced work on the job, but failed to complete the work prior to the deadline. Although paving of the lot was the Debtor's responsibility, Rosbottom went so far as to hire and pay a second contractor at the last minute to complete the job. Unfortunately, the work done by this contractor was not up to the standards specified by the Louisiana authorities who downgraded Shelton's 50-machine video poker license at St. Francisville to a 3- machine license.

B. Procedural History

Mrs. Shelton first filed a personal Chapter 11 proceeding in October, 1996, then later filed a corporate Chapter 11 case in early January, 1996. From the start of the bankruptcy proceedings, the corporate Debtor was not in possession of its assets as they were being held by Rosbottom as the keeper appointed by the Louisiana state court. Rosbottom held substantial claims against the Debtor and Mrs. Shelton and was by far the Debtor's largest creditor.

The primary focus of both reorganization cases was Mrs. Shelton's attempt to invalidate Rosbottom's mortgages and security agreements, which covered substantially all of the property of the corporate Debtor's estate. To this end, Mrs. Shelton filed five different adversary proceedings in the corporate case seeking to invalidate mortgages and security agreements or to hold Rosbottom liable for perceived ill treatment of Mrs. Shelton and the corporate Debtor. In May of 1996, after a two-day trial, the Bankruptcy Court granted a motion for involuntary dismissal at the conclusion of Mrs.

Shelton's evidence in the first of these adversary proceedings to be tried, casting serious doubt upon the continued viability of the remaining adversaries and Mrs. Shelton's entire approach to reorganization. Thus at the conclusion of the trial on which the debtor had staked all its hopes of reorganizing, and nearly five months after it had sought the shelter of bankruptcy court, the Debtor found itself with absolutely no reasonably foreseeable prospect of reorganizing. It held no assets, had not proposed a plan of reorganization, and as a result of inept attempts to challenge its pre-bankruptcy dealings with Rosbottom, faced potential procedural bars to further challenges to the Rosbottom claim and security.

On the heels of the Debtor's defeat, the bankruptcy court on its on motion ordered the appointment of a trustee, in lieu of converting the case to a Chapter 7 liquidation, and instructed the trustee to retain counsel to investigate thoroughly the Debtor's claims against Rosbottom. The Court made a concerted effort to protect Mrs. Shelton and provided the Trustee an opportunity to amend the Debtor's complaint against Rosbottom before the court signed the order of involuntary dismissal so that potential claims against Rosbottom might be preserved against a potential plea of res judicata or collateral estoppel. The trustee moved immediately to amend the complaint that the bankruptcy judge had ordered dismissed and submitted a complaint challenging a key pre-bankruptcy transaction with Rosbottom that the Debtor's counsel previously had failed to attack, Rosbottom's September 15, 1994 sale to the Debtor of the La/Deridder truck stop.

At a status conference a few days after the court granted the trustee's motion to file the amended complaint, Rosbottom through counsel represented to the court that he intended to file a plan and disclosure statement that

contemplated a resolution of all issues between the parties. As a result, the bankruptcy court stayed all formal discovery and proceedings in the litigation for 60 days. Well before expiration of that time, on July 23, 1996, Rosbottom filed a proposed plan and accompanying disclosure statement. The trustee objected to the initial disclosure statement, and on September 5, 1996, Rosbottom filed his first amended plan and first amended disclosure statement. This amended plan was ultimately confirmed in the corporate case on October 10, 1996, providing a comprehensive solution to the many thorny issues plaguing the case.

The Plan called for transfer of all of the Debtor's assets to a new entity, St. Francisville Investments, LLC ("SFI"), to be capitalized by Rosbottom with a capital infusion of $250,000 cash and $112,500 in real estate, assumption by SFI of some $1,097,526.51 of secured debt owed by the Debtor and Mrs. Shelton to Rosbottom, assumption of some $521,735.23 of secured debt to a bank and the Small Business Administration for which the Debtor and Mrs. Shelton were both liable, payment in full of some $114,243.18 in priority tax claims by SFI, payment in full by SFI of all administrative expenses of the corporate bankruptcy estate, and payment in full of some $499,295.79 in unsecured claims from the proceeds of video poker operations at the St Francisville truck stop facility, if any. Because the Debtor did not have a current 5- machine truck stop video poker license and there was a substantial risk that video poker would be made illegal in East Feliciana Parish as a result of a local option election to be held on November 5, 1996, Rosbottom's plan gave unsecured creditors the option to cash out their claims at 20% of face value. In return for the concessions made by him in the plan, Rosbottom was to obtain dismissal of all

claims and adversary proceedings asserted against him by the Debtor, Mrs. Shelton or the trustee.

After the bankruptcy court approved Rosbottom's first amended disclosure statement on September 6, 1996, the plan, disclosure statement and ballots for voting on the plan were distributed to creditors and parties in interest. The ballot tally filed by Rosbottom as plan proponent reflected acceptance of the plan by all classes of creditors. Mrs. Shelton voted against and objected to the plan. The Chapter 11 Trustee and his well-qualified counsel concluded that the plan was in the best interest of creditors and supported it at the confirmation hearing, despite maintaining an adversarial stance toward Rosbottom.

Prior to the confirmation hearing, at various points during the course of the bankruptcy proceedings, both the Debtor and Rosbottom filed applications with the Louisiana authorities seeking reinstatement of the Debtor's 50-machine video poker license at the St. Francisville truck stop. Reinstatement of the license was considered critical by all parties in interest because a local option election was scheduled to be held in Louisiana on November 5, 1996, to determine the outcome of video poker gaming in each parish (county) in the state. If gaming were voted out in the parish where the St. Francisville truck stop was located, the Debtor would be permitted to continue video poker operations for several years after the election if it held a valid license on the date of the election, but not otherwise. Prior to confirmation, the parties had been unsuccessful in obtaining a hearing before the Louisiana authorities on the applications for reinstatement of the license. Eventually, a hearing was scheduled for October 11, 1996, the day after the scheduled date for the hearing on confirmation of the Rosbottom plan, and a new

license was issued on that date. Mrs. Shelton states in her petition to this court that Rosbottom knew prior to the confirmation hearing on October 10th that the license would be issued on October 11th. This is simply untrue.

A few days before the scheduled confirmation hearing, in a status conference with the court and opposing counsel, Rosbottom requested that the Court delay the confirmation hearing until after the local option election to be held on November 5th. This would have permitted Rosbottom to resolve the outstanding contingencies with respect to issuance of a new license for the St. Francisville truck stop and the unknown results of the upcoming local option election before proceeding with confirmation of his proposed plan. However, the trustee and the Bankruptcy Judge did not want to delay confirmation for fear that Rosbottom might withdraw his plan should there be an adverse outcome to either the licensing or local option election contingencies. Rosbottom was therefore required by the court to proceed with confirmation despite the risks to his position inherent in the outstanding contingencies.

At the October 10, 1996, hearing on confirmation, the court heard expert testimony in support of the Rosbottom plan from a certified public accountant engaged by Rosbottom. This expert witness valued the debtor under three separate scenarios involving resolution of the contingencies with respect to issuance of a new license for the St. Francisville facility and the potential outcome of the local option election. The court also questioned the trustee's certified public accountant concerning the value of the debtor's assets. The trustee, with bankruptcy court approval, had engaged a certified public accountant to evaluate the Rosbottom plan and prepare for the confirmation hearing. Among the

accountant's tasks were determining the value of the debtor's truck stop in St. Francisville, as well as the value of its interest in La/Deridder. Notably, Mrs. Shelton failed to offer any evidence at the October 10th confirmation hearing from a valuation expert, or otherwise, in support of her objection to confirmation.

After hearing the evidence tendered at the confirmation hearing on October 10, 1996, the Court found, based upon the uncontested valuation evidence, that there was no equity in the Debtor for Mrs. Shelton under any possible licensing scenario and confirmed Rosbottom's pan. On October 18, 1996, Rosbottom infused $250,000 into SFI as required under the Plan. A motion to reconsider was filed by Mrs. Shelton on October 21, 1996, and denied by the court on October 25, 1996. The motion was filed by Mrs. Shelton after she learned that the St. Francisville video poker license had been issued, but prior to the November 5th local option election.

The delays for appealing the confirmation order expired on November 4, 1996, and the Trustee transferred all of the Debtor's property to SFI on that date, prior to the local option election to be held on November 5, 1996, so that the plan would be substantially consummated and Rosbottom would have no opportunity to reconsider consummation of the plan in the event of an adverse election result. Significantly, SFI assumed on that date some $521,735,23 of secured debt owed to the Bank of St. Francisville and the Small Business Administration. The articles of organization of La/Deridder were also amended on that date to reflect the substitution of SFI for the Debtor as a member in that limited liability company and the amended articles were filed with the Louisiana Secretary of State.

On the same day, Mrs. Shelton filed her notice of appeal of the confirmation order. Although she knew that the Plan called for transfer of the Debtor's assets to SFI within 10 days of the confirmation order and she had some 25 days between October 10, 1996, and November 4, 1996, within which to seek an order staying consummation of the Plan pending appeal, Mrs. Shelton did not seek a stay order from either the bankruptcy court or the district court. In her petition to this court, Mrs. Shelton states that bankruptcy judge preemptively stated that he would not stay the confirmation order pending appeal. Nevertheless, the fact remains that Mrs. Shelton never formally requested that he do so. Mrs. Shelton also states that she had no opportunity prior to consummation to seek a stay in the district court. This is simply not true. She had a more than ample opportunity to do so between October 10, 1996, and November 4, 1996, and simply failed to avail herself of the opportunity.

On November 6, 1996, SFI paid some $62,176.81 of interest due upon the secured debt of the Small Business Administration and some $13,281.09 of interest due on the secured debt of the Bank of St. Francisville. Rosbottom also tendered a payment of $10,000 due under the plan on the secured debt of Mrs. Shelton's sister, Eula Spillman. Rosbottom further tendered payments totalling $1239.64 to some 14 holders of small unsecured claims against the Debtor.

On November 8, 1996, the Bankruptcy Court dismissed all five pending adversary proceedings against Rosbottom with prejudice, forever putting to rest the claims which are central to Mrs. Shelton's argument that she somehow has equity in the Debtor corporation. On November 13, 1996, as required by local bankruptcy court rules, Rosbottom filed a Motion For Entry of Final Decree and attached his

Final Accounting. An Order for final decree closing the bankruptcy case was entered on December 20, 1996.

On January 2, 1997, SFI paid the finally allowed administrative expense claim of the Chapter 11 trustee in the amount of $13,514.66 and of counsel for the trustee in the amount of $49,057.32. Monthly payments to Class 9(b) unsecured creditors from video poker revenues commenced on April 1, 1997.

On appeal to the district court, Rosbottom moved to dismiss Mrs. Shelton's appeal, arguing that substantial consummation of the plan had rendered the appeal moot and that Mrs. Shelton lacked standing due to conversion of her individual Chapter 11 case to Chapter 7 and appointment of a trustee in that case. Mrs. Shelton did not oppose the motion. The district court accepted Rosbottom's arguments and granted the motion to dismiss. Mrs. Shelton then moved for reconsideration, requesting additional time to secure her Chapter 7 trustee's abandonment of the claims at issue so that she could pursue them. In her motion, Mrs. Shelton did not contest the court's conclusion that her appeal was moot. The district court denied the motion for reconsideration, finding that Mrs. Shelton had failed to show good cause or substantial reason to set aside the dismissal. In its order, the district court noted that it had previously granted Mrs. Shelton an extension and that she had allowed that time to lapse without moving for a continuance or taking other steps to preserve her claims.

Mrs. Shelton then filed a notice of appeal to the Fifth Circuit Court of Appeals from the district court's dismissal of her appeal and its denial of her motion for reconsideration. In the Fifth Circuit, Rosbottom again filed a motion to

dismiss on grounds of mootness and standing. However, the court deferred ruling on the motion and requested that the parties brief the appeal on its merits. Contrary to statements made in Mrs. Shelton's petition to this court, the Fifth Circuit did review and consider the case on the merits, including all of Mrs. Shelton's objections to what she describes in this court as a "patently illegal plan." Only after reviewing the case on the merits did the Fifth Circuit grant Rosbottom's motion to dismiss on mootness grounds.

ARGUMENT

This brief in opposition to Mrs. Shelton's petition for certiorari is filed by Rosbottom pursuant to Rule 15 (2) in order to point out perceived misstatements of fact contained in the petition. Irrespective of this Court's views concerning the wisdom of the equitable mootness doctrine developed by the circuit courts of appeal, the facts and procedural history of this case do not make it a good one for review of that doctrine.

Mrs. Shelton argues that the equitable mootness doctrine was abused in the instant case to avoid appellate review on the merits of the order confirming the plan of reorganization. As a matter of the procedural history of this case, this is simply untrue. The Fifth Circuit refused to consider a motion to dismiss the Shelton appeal and deferred its ruling on the motion to the merits. The court required the parties to fully brief all the issues on the merits of the appeal and initially set the matter for oral argument. Only after reviewing the record excerpts and the briefs on the merits did the Fifth Circuit decide that oral argument was unnecessary and that the case could be decided on the briefs. The opinion handed down by the Fifth Circuit rests upon the equitable mootness

doctrine as its ground for decision, but the fact remains that Mrs. Shelton received the benefit of a full appellate review of the merits of her case.

With regard to the merits of the appeal, Mrs. Shelton also contends that, if given an opportunity, she could establish that Rosbottom received assets under the plan of a value far in excess of the value of his legitimate claims and those of other creditors which he agreed to pay under his plan. Mrs. Shelton had an adequate opportunity to offer proof on these "valuation" issues at the confirmation hearing which was held on October 10, 1996. For reasons know only to her and her counsel, she chose not to offer any evidence at the hearing. Rosbottom presented the testimony of a certified public accountant on the valuation issue. The trustee also made available for questioning by the bankruptcy court his certified public account who had been retained with court approval to represent the estate. The court's decision on the issue of valuation was made based upon this uncontested evidence. Mrs. Shelton offered no contrary evidence. The matter of the Debtor's valuation is therefore concluded. Mrs. Shelton had her opportunity and waived it.

Mrs. Shelton also argues that she had no opportunity prior to substantial consummation of the plan to seek a stay of the order of confirmation pending appeal. This is patently untrue. The confirmation order was entered on October 10, 1996, and the first transfers required for consummation of the plan did not take place until November 4, 1996. Mrs. Shelton had 25 days to seek stay orders from both the bankruptcy court and the district court. For reasons known only to her and her counsel, she did not attempt to do so. She has therefore waived any objection to consummation of the plan prior to completion of her appeal.

Mrs. Shelton also argues that the plan in the instant case was a liquidating plan, rather than a reorganization plan. Rosbottom does not agree with this characterization of the plan. The Shelton business was reorganized in a new entity with a new equity security holder, but the business was otherwise continued. New capital was infused, existing creditors were paid and new creditors have been created in the ongoing business of the reorganization entity. To unscramble all these continuing transactions now would be virtually impossible. The Rosbottom plan provided, among other things, for the compromise of five adversary proceedings of dubious merit which the Debtor had filed against Rosbottom and the transfer to the reorganization entity (SFI) of all of the Debtor's assets; in exchange for which Rosbottom's infused $250,000 cash and $112,500 of real estate (a total of $362,500) into SFI, which assumed some $1,097,525 of secured debt owed to Rosbottom, $521,735 of secured debt to the Small Business Administration and the Bank of Saint Francisville, $120,000 of priority tax debt, $66,000 of administrative expenses of the Chapter 11 proceeding, $10,000 of debt to Mrs. Shelton's sister, and $502,740 of unsecured trade debt (for total assumed debt of $2,318,000). A substantial portion of this assumed debt has now been paid and new debts have been incurred by the reorganization entity in connection with its ongoing operations. These transactions represent a very real change in circumstances and, contrary to Mrs. Shelton's' contentions, they cannot now be undone.

Mrs. Shelton also argues that relief could be granted to her without affecting the rights of innocent third parties who are not before the court. We fail to see how this could take place at this late date. If the plan is unwound, would not SFI be entitled to reimbursement from innocent third parties, including the Small Business Administration and the IRS, of

the sums it has paid to them? As noted above, secured creditors, administrative expense claimants, the taxing authorities and unsecured creditors who are not before the court have been paid under the plan. In effect, Mrs. Shelton seeks a one-sided, partial dismantling of the plan. She desires to leave the plan intact insofar as it benefitted her by payment of her corporation's debts. She seeks to dismantle the plan only insofar as it transferred to Rosbottom her corporation's assets. Unfortunately for Mrs. Shelton, the assets and liabilities of a business do not exist independently of one another. They exist side by side on the balance sheet. If Rosbottom were required to give up the assets he acquired under the plan, he would be entitled to recover from innocent third parties the debts of the business which he has paid. The parties cannot be returned to the *status quo ante* without affecting the rights of innocent third parties.

CONCLUSION

The facts and procedural history of the instant case do not make it a good one for consideration by this Court of the "equitable mootness" doctrine developed by the circuit courts of appeal. Accordingly, the petition for writs of certiorari should be denied.

Respectfully submitted,

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